IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on : 15.03.2021 | Pronounced on : 17.03.2021 |
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Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.387 of 2017

S.K.Nazeer Basha,
S/o.Rahamathunia,
No.78/38, Ajibamulk 3rd Street,
Thousand Light,
Chennai - 600 002. .. Appellant

/versus/

1. The Anjuman E.Himayath E Islam,
No.16, B.N.Reddy Road,
T.Nagar,
Chennai - 600 017.

2. Universal Sampo General Insurance Company Limited,
Capital Tower, 5th Floor, 'B' Wing,
No.554/555, Anna Salai,
Teynampet,
Chennai - 600 018. .. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 20.07.2016 made in M.A.C.T.O.P.No.3122 of 2014 on the file of the Motor Accident Claims Tribunal (In the Court of IV Small Causes), Chennai.

| | | |
|---|---|---|
| For Appellant | : | Ms.A.Subadra |
| For R2 | : | Mrs.R.Sree Vidhya |
| For R1 | : | Not ready notice |

J U D G M E N T

Heard the Learned Counsel for the appellant and the Learned Counsel for the 2nd respondent.

2. This Appeal is filed by the claimant for enhancement of compensation. The case of the appellant is that on 10.04.2014, at about 14.45 hrs, while he was travelling as a passenger in the auto bearing registration No.TN-09-BC-8529, due

to rash and negligently driving of the auto driver, near Arulambal street, the vehicle dashed against the car, in which, the claimant sustained grievous injury and was admitted in the hospital for treatment of the fracture on left shoulder bone. He was inpatient from 10.04.2014 to 14.04.2014. At the time of accident, he was working as Store Officer, earning Rs.18,000/- p.m. Claiming a sum of Rs.12,00,000/- as compensation against the owner of the auto and his insurer.

3. In the counter filed by the 1st respondent owner of the auto, it was contended that the vehicle is duly insured with package policy with the 2nd respondent and therefore, the 2nd respondent is liable pay the claimant and indemnify the vehicle owner. The 2nd respondent remind exparte.

4. Before the Tribunal, the claimant examined himself as PW.1 and the Doctor, who assessed disability was examined as P.W.2. 8 Exhibits were marked in support of the claim. No witness was examined on behalf of the defendant and no documents filed.

5. The Tribunal awarded a compensation of Rs.1,18,250/- with 7.5% interest from the date of filing the petition (17.04.2016) till the date of realisation payable by the 2nd respondent/Insurance Company.

6. In the appeal, the claimant has contended that the P.W.2 the Doctor, who has examined him had assessed 45% disability. Whereas, the Tribunal has reduced the disability to 25% and had awarded only Rs.3,000/- per percentage. Further, due to the accident the claimant was not able to attend the job for more than three months. However, the tribunal has awarded only a sum of Rs.6,500/- towards loss of income during the treatment period. Under the head of attender chargers and loss of amenities, the Tribunal has awarded a meager amount, which has to be enhanced.

7. The Learned Counsel for the respondent contend that the Tribunal has rightly awarded the compensation based on the nature of injury and period of treatment and there is no need for any further enhancement. The disability certificate issued by doctor marked as Ex.P.7 and the discharge summary Ex.P.3 indicates that, the claimant had suffered dislocation of his left shoulder joint and it was fixed by surgical procedure. He was treated as inpatient at Bharathi Raja Hospital between 10.04.2014 and 14.04.2014. Though, the disability certificate issued by P.W.2 indicates that, the claimant has suffered partial permanent disability of 45%. The AC joint dislocation has been fixed by Surgery and fixation found satisfactory. Therefore, the Tribunal has rightly assessed the disability at 25% and awarded Rs.3,000/- per percentage of disability.

8. This Court finds there is no error in the said quantum of compensation for the disability caused due to temporary dislocation of the shoulder bone. However, taking note of the fact that due to dislocation, the loss of income of the claimant will be for three months but the tribunal has awarded only for one month. In this regard, this Court is of the view that loss of income has to be fixed at Rs.19,500/- instead of Rs.6,500/- and for loss of amenities a further sum of Rs.2,000/- added. Accordingly, the award of the Tribunal is enhanced as below:-

| Sl.Nos. | Compensation under various heads | Award passed by this Court |
|---|---|---|
| 1. | Disability | 75,000/- |
| 2. | Pain and Suffering | 20,000/- |
| 3. | Extra Nourishment | 3,500/- |
| 4. | Transport to Hospital | 3.500/- |
| 5. | Damages to cloths | 1,000/- |
| 6. | Attender Charges | 750/- |
| 7. | Medical expenses | 5,000/- |
| 8. | Loss of Income | 19,500/- |
| 9. | Loss of Amenities | 5,000/- |
| | Total | Rs.1,33,250/- |

9. The 2nd respondent/Insurance Company is directed to pay a sum of Rs.1,33,250/- with 7.5% interest from the date of filing the petition (17.04.2016) till the date of realisation. The 2nd respondent shall deposit the award amount within a period of 8 weeks, from the date of receipt of copy of this judgment. On such deposit, the claimant is entitled to withdraw the same on filing proper application.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(AD-IV)

//True copy//

Sub Assistant Registrar

bsm

To,

The Presding Officer,
Motor Accident Claims Tribunal
(In the Court of IV Small Causes),
Chennai.

Copy To

The Section Officer,
VR Section,
High Court of Madras.

+1cc to M/s.M.Malar, Advocate SR.No.17297

+1cc to Mrs.R.Sree Vidhya, Advocate SR.No.17505



RD(CO)
GMY(09/11/2021)